

REPRESENTATIVES FOR PETITIONERS:

Bradley D. Hasler, Bingham Greenebaum Doll LLP

REPRESENTATIVE FOR RESPONDENT:

Lisa Garoffolo, Boone County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Brian & Stacy Holdsworth	)	Petition No.:	06-003-14-3-5-00118-16
)		
Petitioners,	)	Parcel No.	003-14891-99
)		
v.	)	County:	Boone
)		
Boone County Assessor,	)	Township:	Eagle
)		
Respondent.	)	Assessment Year:	2014

Appeal from the Final Determination of the
Boone County Property Tax Assessment Board of Appeals

June 13, 2017

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The Holdsworths claim that, through an error of omission, they were denied a homestead deduction¹ for the 2014 assessment year. The case boils down to one dispositive

¹ The parties used the terms “homestead deduction” and “homestead exemption” interchangeably referring to the standard deduction for homesteads provided by Ind. Code § 6-1.1-12-37. We will use the term “homestead deduction.”

question: Did they actually file a claim for the deduction?

PROCEDURAL HISTORY

2. The procedural history is a little unclear. The Holdsworths apparently filed a Form 133 petition with the Boone County Auditor sometime in 2015, although they did not give us a copy of that petition. We assume that the Auditor and the Boone County Assessor denied the petition, because the Boone County Property Tax Assessment Board of Appeals (“PTABOA”) held a hearing on the matter. On November 30, 2015, the PTABOA issued a Form 115 determination denying the Holdsworths relief. The Holdsworths then filed a new Form 133 petition with the Board, alleging that their taxes, as a matter of law, were illegal and that, through an error of omission, they were not given a homestead deduction for the 2014 assessment year.
3. Dalene McMillen, our designated administrative law judge, held a hearing on March 15, 2017. Neither she nor the Board inspected the property.
4. The following people were sworn and testified:
 - Stacy Holdsworth
 - Lisa Garoffolo, Boone County Assessor
 - Heather R. Myers, Boone County Auditor
 - Teresa K. Price, deputy auditor.
5. The Holdsworths offered the following exhibits:
 - Petitioner Exhibit P1: Settlement statement for 6593 Regents Park Drive in Zionsville, (**CONFIDENTIAL**)
 - Petitioner Exhibit P2: Settlement statement for 6825 Woodhaven Place in Zionsville, (**CONFIDENTIAL**).
6. The Assessor offered the following exhibits:
 - Respondent Exhibit 1: Boone County Appeal Worksheet,
 - Respondent Exhibit 2: 2014 property record card for the subject property,
 - Respondent Exhibit 3: Photograph of subject property,
 - Respondent Exhibit 4: Parcel information for subject property,
 - Respondent Exhibit 5: Notice of Hearing on Petition – Form 114,
 - Respondent Exhibit 6: Form 115 determination,
 - Respondent Exhibit 7: Notice to homeowner from Assessor’s office,

- Respondent Exhibit 8: Letter and Notice of Appearance from Bradley Hasler and Form 133 petition,
- Respondent Exhibit 9: Hearing notice,
- Respondent Exhibit 10: Sales disclosure form for subject property,
- Respondent Exhibit 11: Claim for Homestead Property Tax Standard / Supplemental Deduction – Form HC-10.

7. The following additional items are part of the record:

- Board Exhibit A: Form 133 petition,
- Board Exhibit B: Hearing notice,
- Board Exhibit C: Hearing sign-in sheet.

THE HOLDSWORTHS' CONTENTIONS

8. On December 30, 2013, the Holdsworths bought the subject property (6593 Regents Park Drive, Zionsville) with the intent of eventually making it their home. But they planned to continue living in their existing home at 6825 Woodhaven Place indefinitely, because Mr. Holdsworth was working out of town and Ms. Holdsworth did not think she could manage the move by herself. They moved to the subject property in early February and have lived there ever since. They sold the Woodhaven Place property on February 28, 2014. *Holdsworth testimony; Exs. P1-P2.*
9. Ms. Holdsworth did not immediately apply for a homestead deduction on the subject property because she believed the deadline was in May. When she called the “courthouse” to confirm her belief, she learned that May was not the deadline. Nonetheless, she wanted to apply for the deduction within the next several weeks after making the telephone call, so she calendared a reminder on every Friday in May and June. *Holdsworth testimony.*
10. Ms. Holdsworth testified that she went to the courthouse to claim a homestead deduction sometime in the “May-June time period.” She believed that she went to the wrong office first, because she remembered going to offices on two different floors. She did not recall the specifics of what happened at either office. But she did remember asking for the form she needed, and she filled out the paperwork she was given. Although she normally keeps receipts, she acknowledged that she did not have a receipt for what she filed. *Holdsworth testimony.*

11. The Holdsworths discovered they had not gotten a homestead deduction when they received a larger-than-expected escrow bill from their mortgage company in June 2015. Ms. Holdsworth therefore made another trip to the courthouse, where she learned there was no record of her having claimed the deduction in 2014. She again filed a claim, and she was told to keep the receipt. She was also instructed how to file an appeal for the 2014 deduction. *Holdsworth testimony*.
12. According to the Holdsworths, it is up to the Assessor to “prove a negative”—that they did not claim the deduction in 2014. The Assessor did not offer sufficient detail to do that. The Auditor therefore committed an error of omission² by failing to grant the homestead and supplemental deductions and to apply the accompanying 1% tax-cap credit.³ *Hasler argument (citing Lake Santee Property Owner’s Association, Inc. v. Decatur County Assessor, pet. no. 16-006-06-3-5-00001 etc. (IBTR, July 2, 2015).*

THE ASSESSOR’S CONTENTIONS

13. The Holdsworths may have been eligible for a homestead deduction on the subject property for 2014. But the Auditor has no record of them ever applying for it. *Garoffolo argument; see also, Garoffolo testimony on cross-examination; Resp’t Ex. 4.*
14. The sales disclosure form the Holdsworths completed when they bought the subject property has a section indicating that it may be used to apply for certain deductions. The form asks the buyer to check all the deductions that apply. Ms. Holdsworth checked “no” boxes for all the deductions, including the homestead deduction. She did check the box indicating that the property would be used as the Holdsworths’ primary residence, but instead of listing its address in the lines provided, she wrote, “Keep Homestead on 6825

² Although they checked the box on the Form 133 petition alleging that their taxes, as a matter of law, were illegal, the Holdsworths did not address that claim at the hearing.

³ Under Indiana Code § 6-1.1-12-37.5, a person who is entitled to receive a homestead deduction under Ind. Code § 6-1.1-12-37 is also entitled to receive a supplemental deduction that applies after the homestead deduction but before any other deductions. I.C. § 6-1.1-12-37.5(a). Similarly, the tax-cap credit is a credit against taxes in excess of 1% of the gross assessed value of a property that “has been granted” a homestead deduction. I.C. § 6-1.1-20.6-2; I.C. § 6-1.1-20.6-7.5(a)(1). Taxpayers do not have to apply for that credit; instead, the county auditor must identify eligible properties and apply the credit. I.C. § 6-1.1-20.6-8.

Woodhaven Place, Zionsville, IN until it sells.” The Auditor therefore kept the homestead deduction on the Woodhaven Place property. *Price and Myers testimony; Resp’t Ex. 4.*

15. According to the Auditor’s records, the first time the Holdsworths appeared in her office was in July 2015, when they completed Form HC10 for the 2015 assessment year. They were given a receipt. Because the Holdsworths have not produced a receipt for 2014 and the Auditor has no record of them having filed a claim form for that year, the Assessor believes they inadvertently failed to apply for the deduction. *Garoffolo, Price, and Myers testimony; Garoffolo argument; Resp’t Ex. 11.*

Analysis

16. Indiana Code § 6-1.1-12-37 provides a standard deduction from assessed value for homesteads, which the statute defines as a dwelling that an individual owns and uses as his place of residence and up to one acre of surrounding land. I.C. § 6-1.1-12-37(a)-(c) (version d). At all times relevant to this appeal, a taxpayer had to apply for the deduction in one of two ways.⁴ First, he could file with the county auditor a certified statement, in duplicate, on forms prescribed by the Department of Local Government Finance (“DLGF”). I.C. § 6-1.1-12-37(e) (versions a and b) (2014 repl. vol.). The DLGF prescribed Form HC10 for that purpose. 50 IAC 24-4-2. A taxpayer had to complete Form HC10 within the calendar year for which he sought the deduction and file that form on or before January 5 of the immediately succeeding year. *Id.*; I.C. § 6-1.1-12-37(e) (versions a and b) (2014 repl. vol.). Alternatively, a taxpayer could use the sales disclosure form from his purchase of the property to claim the deduction. *See Id.*; I.C. § 6-1.1-12-44 (2014 repl. vol.).
17. The subject property qualified as a “homestead” under Ind. Code § 6-1.1-12-37(a)(2)—the Holdsworths bought it at the end of 2013 and used it as their principal place of

⁴ Once the auditor grants the deduction, it carries forward and taxpayers need not reapply. *See* I.C. §6-1.1-12-37(e) (version d); I.C. § 6-1.1-12-17.8.

residence beginning in February 2014. But the parties dispute whether the Holdsworths actually claimed the deduction for 2014.⁵

18. The Auditor has no record of the Holdsworths having filed anything to claim a homestead deduction until July 8, 2015, when they filed their Form HC10 for the 2015 assessment date. The Holdsworths do not contend that they used their sales disclosure form to claim the deduction in lieu of filing a certified statement on Form HC10. And the face of the sales disclosure form shows that the Holdsworths did not intend to use it for that purpose. As for filing Form HC10, while Ms. Holdsworth testified that she filled out some paperwork at “the courthouse” sometime in May or June of 2014, she did not produce a receipt or other tangible evidence to show that she filed that paperwork.
19. In the absence of a receipt for a homestead claim, a claimant’s self-serving testimony usually reflects the credibility of the proverbial excuse of “the dog ate my homework.” For these reasons, the Board does not find that a vivid memory of filing for a homestead is necessarily sufficient absent a receipt. *See Vanessa Purdom v. Knox County Assessor*, Pet. No. 42-023-13-3-5-00001, Indiana Board of Tax Review, September 2, 2015. The circumstances of this case suggest that the Holdsworths were very deliberate in making sure that they did not lose the homestead on their other property through the sales disclosure on the subject property. The “yes” box is checked beside “Will this property be the buyer’s primary residence?” *Resp’t Ex. 10*. But the handwriting states “Keep Homestead on 6825 Woodhaven Place Zionsville until it sells.”⁶ In the column for “Condition,” the box beside “Homestead” is checked “no.” We do not find the handwritten directive on the sales disclosure to be sufficient in and of itself to claim the homestead. Overall, the Board does not find that the evidence is sufficient to prove that the homestead claim was later filed.

⁵ Holdsworths do not contend that their Form HC10 from July 2015 was a claim for the 2014 deduction, albeit an untimely one. We therefore need not address whether the Auditor would have been required to grant such a deduction claim despite its untimeliness.

⁶ The Board notes that the Holdsworths were not entitled to maintain the homestead on the Woodhaven property if the subject property became their primary residence. A homestead is not elective. The Holdsworths’s eligibility for a homestead on Woodhaven would terminate upon the change in their primary residence regardless of when the Woodhaven property sold.

20. For these reasons, the Holdsworths are not entitled to the homestead deduction because they failed to establish that they timely filed their claim. However, a taxpayer is “not required to file an application” for the tax-cap credit. I.C. §6-1.1-20.6-8. The Holdsworths have established that the property was their homestead for the tax year at issue and are entitled to the tax-cap credit.

SUMMARY OF FINAL DETERMINATION

21. Because the Holdsworths did not file a homestead deduction claim for the 2014 assessment year, the Auditor did not err in failing to grant that deduction or the accompanying supplemental deduction, but erred in failing to apply the 1% tax-cap credit.

This Final Determination is issued on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court’s rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court’s rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.